

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

In Re:

City of New York v. Amerada Hess, et al.
No. 04 Civ. 3417

CONFIDENTIAL (Per 2004 MDL 1358 Order)

October 10, 2009

Videotaped Deposition of
BRUCE F. BURKE, held at the New York
City Law Department, 100 Church Street,
6th Floor, New York, New York, beginning
at approximately 2:10 p.m., before Ann
V. Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
Court, and a Notary Public.

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<p style="text-align: right;">13</p> <p>1 for an expert opinion. Relevance.</p> <p>2 A. I have.</p> <p>3 (Below-described document</p> <p>4 marked as Burke Exhibit 2.)</p> <p>5 BY MS. AMRON:</p> <p>6 Q. Then let me show you</p> <p>7 what we have marked as Exhibit 2, which</p> <p>8 is a graphic entitled "ExxonMobil</p> <p>9 Refineries - 1985-2003," and ask you to</p> <p>10 explain what this graphic shows.</p> <p>11 MR. STACK: Again, objection</p> <p>12 to relevance. Also objection on the</p> <p>13 grounds that this calls for a legal</p> <p>14 opinion and as the testimony of</p> <p>15 percipient witness, it is hearsay and we</p> <p>16 would argue that with respect to this</p> <p>17 witness, his purported percipient</p> <p>18 witness testimony is nothing more than a</p> <p>19 conduit for hearsay. And a substitute</p> <p>20 for an expert opinion, which was not</p> <p>21 proffered in a timely manner.</p> <p>22 Q. You can answer.</p> <p>23 A. Okay. So this exhibit</p> <p>24 presents the location of ten refineries</p>	<p style="text-align: right;">15</p> <p>1 A. Mobil.</p> <p>2 Q. And after the merger, was</p> <p>3 that then owned by Exxon Mobil?</p> <p>4 A. It was.</p> <p>5 Q. Now, as part of your work</p> <p>6 at Nexant, have you become familiar with</p> <p>7 the capacity of refineries in the United</p> <p>8 States?</p> <p>9 MR. STACK: Objection,</p> <p>10 relevance. Calls for an expert opinion,</p> <p>11 hearsay.</p> <p>12 A. Yes, I have. I mentioned</p> <p>13 the database where we keep track of</p> <p>14 characteristics of all refineries in the</p> <p>15 U.S. That includes capacities of each</p> <p>16 of those refineries.</p> <p>17 Q. And can you explain what</p> <p>18 the capacity of a refinery means?</p> <p>19 MR. STACK: Objection,</p> <p>20 relevance and calls for an expert</p> <p>21 opinion.</p> <p>22 A. Yes. Capacity is -- for</p> <p>23 refining is a measure of how much crude</p> <p>24 oil can be processed by that facility.</p>
<p style="text-align: right;">14</p> <p>1 in the United States, each of which was</p> <p>2 owned by Exxon or Mobil up to 1999, and</p> <p>3 then several of them were sold between</p> <p>4 1985 and 2003. There's four at the Gulf</p> <p>5 Coast, and these were presented in my</p> <p>6 prior testimony where I looked at the</p> <p>7 refineries in Beaumont, Baton Rouge,</p> <p>8 Baytown, and Chalmette.</p> <p>9 Also the two refineries in</p> <p>10 New Jersey which were also covered in my</p> <p>11 prior testimony at Bayway, which was</p> <p>12 sold by Exxon in 1993, and Paulsboro,</p> <p>13 which was sold in 1997.</p> <p>14 The additional refineries</p> <p>15 include Joliet in Illinois; Billings,</p> <p>16 Montana; and two refineries in</p> <p>17 California at Benicia and Torrance. The</p> <p>18 Benicia refinery was sold in 2000.</p> <p>19 Q. And prior to its sale, who</p> <p>20 owned the Benicia refinery?</p> <p>21 A. Exxon.</p> <p>22 Q. And who owned the Torrance,</p> <p>23 California, refinery between 1985 and</p> <p>24 2003?</p>	<p style="text-align: right;">16</p> <p>1 It is measured in barrels per day, is</p> <p>2 the unit of capacity.</p> <p>3 Q. And is refining capacity an</p> <p>4 indication of the actual amount of</p> <p>5 gasoline produced by a refinery?</p> <p>6 MR. STACK: Objection,</p> <p>7 relevance. Calls for an expert</p> <p>8 opinion. Lack of foundation and also</p> <p>9 this would be hearsay.</p> <p>10 A. It's -- capacity is a good</p> <p>11 indication of relative production of</p> <p>12 gasoline. Each refinery, of course, is</p> <p>13 specific in terms of how much gasoline</p> <p>14 it produces per barrel of crude oil, but</p> <p>15 on a sort of national comparative basis,</p> <p>16 a larger refinery, with clearly some</p> <p>17 exceptions, would produce more gasoline</p> <p>18 than a smaller refinery, unless we're</p> <p>19 talking about a specialized non-fuel</p> <p>20 type refinery. We're basically talking</p> <p>21 here about -- at least I'm talking about</p> <p>22 fuel-focused refineries that are</p> <p>23 primarily making gasoline and diesel and</p> <p>24 jet fuel.</p>

<p style="text-align: right;">17</p> <p>1 Q. From 1985 until the merger 2 of Exxon Mobil in 1999, if you 3 considered Exxon and Mobil together, 4 where did they rank in terms of refining 5 capacity in the United States? 6 MR. STACK: Objection, 7 relevance. Calls for an expert opinion, 8 lacks foundation, and is hearsay. 9 A. I would rank the combined 10 capacity of Exxon and Mobil during that 11 time period as number one, perhaps 12 number two, but nothing below that. 13 Q. And is that, the relative 14 size of refineries and the relative 15 capacity, something that you use in the 16 course of your work? 17 MR. STACK: Objection, 18 relevance. Calls for an expert opinion, 19 lacks foundation. Calls for hearsay. 20 A. It is. As I mentioned, we 21 maintain records, databases, and models 22 of refineries throughout the United 23 States. Capacity is a key factor in 24 terms of determining production of</p>	<p style="text-align: right;">19</p> <p>1 opinion. 2 A. Well, Exxon manufactured 3 MTBE at the Benicia refinery. They did 4 not have a manufacturing facility for 5 MTBE at Torrance. Both of them, 6 however, produced MTBE gasoline at those 7 two refineries. Torrance purchased MTBE 8 from other sources, including imports. 9 Q. Let me turn to -- well, let 10 me go back to that for a second. What 11 is the basis of your knowledge about 12 MTBE use at the two California 13 refineries? 14 MR. STACK: Objection, 15 relevance. 16 A. Well, in California the 17 California Energy Commission, the CEC, 18 from the early '90s through to the 19 phaseout of MTBE in California monitored 20 the production of MTBE gasoline at each 21 California refinery, and that was a 22 series of reports that were put out on a 23 quarterly basis. And that was, again, 24 something that I monitored as an ongoing</p>
<p style="text-align: right;">18</p> <p>1 products, including gasoline. So 2 absolutely, knowing what capacity is is 3 a fundamental characteristic of 4 refining. 5 Q. Now, after the merger of 6 Exxon and Mobil in 1999, where did the 7 new company, Exxon Mobil, rank in terms 8 of refining capacity in the United 9 States? 10 MR. STACK: Objection, 11 relevance. 12 A. It was -- 13 MR. STACK: Calls for an 14 expert opinion. Lacks foundation. And 15 also calls for hearsay testimony from a 16 percipient witness. 17 A. Exxon Mobil would still be 18 in certainly the top one or two refiners 19 in the U.S. based on capacity. 20 Q. Did Exxon Mobil manufacture 21 MTBE at either of its California 22 refineries? 23 MR. STACK: Objection, 24 relevance, and calls for an expert</p>	<p style="text-align: right;">20</p> <p>1 part of my activities in the industry 2 and it certainly demonstrated that both 3 Benicia and Torrance produced MTBE 4 gasoline from the early '90s forward. 5 Q. And how do you use these 6 CEC reports in the course of your 7 business? 8 MR. STACK: Objection, 9 relevance, and calls for an expert 10 opinion. 11 A. Well, let me give you a 12 specific example. I did work for the 13 Department of State looking at the 14 phaseout of MTBE in California. And 15 part of that work was to review how 16 refineries had used MTBE, which ones had 17 used them, how much, and when they ended 18 up phasing it out, its use. I also 19 looked at which refineries had within 20 the refineries MTBE production 21 facilities as opposed to those who did 22 not. So that was a specific case. 23 But generally, again, it's 24 part of the general monitoring of key</p>

<p style="text-align: right;">21</p> <p>1 elements of the industry. And since</p> <p>2 California is a very big market, that</p> <p>3 was a market that I would keep track of.</p> <p>4 Q. Well, let me then turn to</p> <p>5 pipelines. In the course of your work</p> <p>6 at Nexant, have you become familiar with</p> <p>7 the common carrier pipeline systems used</p> <p>8 to transport gasoline in the United</p> <p>9 States?</p> <p>10 A. I have. I have. I think,</p> <p>11 as mentioned in my prior testimony, the</p> <p>12 common carrier pipelines are critical to</p> <p>13 the movement of fuel and supply of fuel</p> <p>14 around the United States. The -- a very</p> <p>15 large amount of gasoline and other fuels</p> <p>16 is produced at the Gulf Coast, more than</p> <p>17 can be consumed there, and it needs to</p> <p>18 be moved to market, and the majority of</p> <p>19 that is done using pipelines, common</p> <p>20 carrier pipelines. And I had talked</p> <p>21 about the use of the Colonial and the</p> <p>22 Plantation pipelines in prior testimony,</p> <p>23 which run from the Gulf Coast up to the</p> <p>24 East Coast.</p>	<p style="text-align: right;">23</p> <p>1 product -- primarily the product</p> <p>2 specifications of that pipeline.</p> <p>3 Essentially all of those</p> <p>4 common carrier pipelines operate in a</p> <p>5 commingled fashion, though they</p> <p>6 certainly have the capability to operate</p> <p>7 in a segregated fashion, similar to what</p> <p>8 I had reviewed for the Colonial and</p> <p>9 Plantation pipelines and Buckeye</p> <p>10 pipelines.</p> <p>11 Q. And how are common carrier</p> <p>12 pipelines used in California?</p> <p>13 MR. STACK: Guys, I don't</p> <p>14 know what's going on, but the signal, we</p> <p>15 can't hear you on this end. There's a</p> <p>16 loud buzzing noise. It sounds like some</p> <p>17 kind of electronic interference with the</p> <p>18 phone in your room. It just kicked in.</p> <p>19 It sounds like a roar. I don't know how</p> <p>20 else to describe it.</p> <p>21 MS. AMRON: Hang on a</p> <p>22 second. We're trying to see what it</p> <p>23 could be.</p> <p>24 MR. STACK: Thanks, Susan.</p>
<p style="text-align: right;">22</p> <p>1 There are several major</p> <p>2 pipeline systems which run up from the</p> <p>3 Gulf Coast to the center of the country,</p> <p>4 pipelines like the Explorer pipeline and</p> <p>5 TEPPCO.</p> <p>6 In California there's</p> <p>7 basically two common carrier pipeline</p> <p>8 systems, primary ones. Both are owned</p> <p>9 by Kinder Morgan, one in the north of</p> <p>10 California, one in the south.</p> <p>11 Q. Could you remind the jury</p> <p>12 what a common carrier pipeline is?</p> <p>13 MR. STACK: Objection,</p> <p>14 relevance. Calls for an expert</p> <p>15 opinion. Lacks foundation.</p> <p>16 A. Well, as I had reviewed in</p> <p>17 my prior testimony, common carrier</p> <p>18 pipelines are -- well, first, all</p> <p>19 pipelines which cross states, interstate</p> <p>20 pipelines, which carry petroleum</p> <p>21 products are common carrier pipelines.</p> <p>22 And what that means is that the pipeline</p> <p>23 is required to carry refined products</p> <p>24 from any supplier that meets the</p>	<p style="text-align: right;">24</p> <p>1 MS. AMRON: We can go off</p> <p>2 the record for a second.</p> <p>3 THE VIDEOGRAPHER: We're</p> <p>4 going off the record. The time is</p> <p>5 2:31 p.m.</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: We're</p> <p>8 back on the record. The time is</p> <p>9 2:33 p.m.</p> <p>10 BY MS. AMRON:</p> <p>11 Q. Mr. Burke, can you explain</p> <p>12 how common carrier pipelines are used in</p> <p>13 California?</p> <p>14 MR. STACK: Objection,</p> <p>15 relevance. Lacks foundation. Calls for</p> <p>16 an expert opinion.</p> <p>17 A. Sure. The common carriers</p> <p>18 in California basically work the same</p> <p>19 way that they work in other parts of the</p> <p>20 country. The pipelines themselves do</p> <p>21 not produce product. So what they do is</p> <p>22 they take in product from refineries or</p> <p>23 to a certain extent from imports and</p> <p>24 they transport them. As I mentioned,</p>

<p style="text-align: right;">25</p> <p>1 common carrier pipelines, including in 2 California, operate in a commingled 3 fashion, though there is the -- there 4 certainly is some segregated shipping 5 that goes on. So fairly similar to the 6 description that I discussed in prior 7 testimony for the Colonial and 8 Plantation.</p> <p>9 Q. From the period from 1985 10 through 2003, what was the major common 11 carrier pipeline in California?</p> <p>12 MR. STACK: Objection, 13 relevance. Lacks foundation. Calls for 14 an expert opinion. Also vague and 15 ambiguous. We don't know what part of 16 California.</p> <p>17 BY MS. AMRON:</p> <p>18 Q. For the -- let me then 19 rephrase the question. From 1985 to 20 2003, was there a single major common 21 carrier pipeline that operated in 22 California?</p> <p>23 MR. STACK: Objection, 24 relevance, foundation. Calls for an</p>	<p style="text-align: right;">27</p> <p>1 part of the sort of overall scope, so, 2 again, I became familiar with how 3 gasoline is moved in California through 4 the Kinder Morgan pipelines and prior 5 versions of those since Kinder Morgan 6 has bought up assets over the years.</p> <p>7 Q. Let me ask you to look at a 8 graphic that has been marked as 9 Exhibit 3.</p> <p>10 (Above-described document 11 marked as Burke Exhibit 3.)</p> <p>12 BY MS. AMRON:</p> <p>13 Q. And, first, are you 14 familiar with the pipeline depicted in 15 that graphic?</p> <p>16 A. I am.</p> <p>17 Q. And could you explain what 18 this graphic shows?</p> <p>19 MR. STACK: Objection, 20 relevance, foundation. It calls for an 21 expert opinion and it's hearsay, or more 22 properly this witness is a conduit for 23 hearsay relative to describing what has 24 been identified as Exhibit No. 3.</p>
<p style="text-align: right;">26</p> <p>1 expert opinion. For a percipient 2 witness, this would be hearsay 3 testimony.</p> <p>4 A. There are two major common 5 carrier pipelines in California. They 6 are currently both owned by Kinder 7 Morgan. There's a pipeline system which 8 is based in San Francisco, it is their 9 northern system; and then a southern 10 system, which is based in Los Angeles.</p> <p>11 Q. And what is the basis for 12 your knowledge about the pipeline system 13 in California?</p> <p>14 A. Well, I have periodically 15 over the years looked at the 16 distribution and shipping of products in 17 California. Several years ago I was 18 involved in looking at the Kinder Morgan 19 assets, including product pipelines. So 20 during the course of doing that, that 21 included looking at the California 22 assets and the pipeline systems there. 23 During my Department of State work, the 24 movement of gasoline in California was</p>	<p style="text-align: right;">28</p> <p>1 A. Yeah. This exhibit is off 2 of the Kinder Morgan pipeline Web site, 3 I believe. It certainly looks familiar.</p> <p>4 It shows the routes that 5 the Kinder -- the northern California 6 Kinder Morgan pipeline system covers, 7 and there are a number of different legs 8 to that system. So there's -- centered 9 around the San Francisco Bay area, which 10 is where these legs basically come out 11 from, gasoline is gathered in from the 12 various refineries in the San Francisco 13 Bay. There's a leg which supplies to 14 the south down to San Jose, another leg 15 which supplies over to Fresno south and 16 east, and then there is a run of pipe 17 which goes to Sacramento and then on 18 across to Reno, Nevada, and then also a 19 run which heads north when you get past 20 Sacramento up to Chico, California, so 21 serving some of those markets.</p> <p>22 Basically this is an overview of the 23 Kinder Morgan northern California 24 pipeline system.</p>

<p style="text-align: right;">29</p> <p>1 Q. Is this depiction of the 2 pipeline system consistent with your 3 knowledge of how the Kinder Morgan 4 pipeline system operates in northern 5 California?</p> <p>6 MR. STACK: Objection, 7 relevance. Foundation as to operation 8 of the system. It calls for an expert 9 opinion and hearsay.</p> <p>10 A. It is consistent. Several 11 years ago I was involved in an analysis 12 looking at the supply, how gasoline was 13 supplied to Reno, Nevada, and as part of 14 that I reviewed gasoline coming over on 15 the Kinder Morgan system, which is one 16 of the primary supply sources, and this 17 is consistent with that.</p> <p>18 Q. Now, Kinder Morgan pipeline 19 in northern California, is that a common 20 carrier system?</p> <p>21 A. Yes, it is.</p> <p>22 Q. And from 1985 through the 23 period 2003, to your knowledge was 24 gasoline shipped on the Kinder Morgan</p>	<p style="text-align: right;">31</p> <p>1 keeping those quarterly records in the 2 early '90s and that documented the use 3 of MTBE at that point.</p> <p>4 So I would say early '90s 5 forward, certainly.</p> <p>6 Q. And based on your 7 experience and work with Kinder Morgan, 8 did the Exxon Benicia refinery 9 distribute gasoline in California 10 through the Kinder Morgan pipeline in 11 northern California?</p> <p>12 MR. STACK: Objection, 13 relevance. Lacks foundation. Calls for 14 hearsay or calls for an expert opinion.</p> <p>15 A. The answer is yes, the 16 Benicia refinery was connected to the 17 Kinder Morgan common carrier system, and 18 the basis for knowing that is that all 19 the refineries in the San Francisco area 20 were connected to that system, which I 21 had learned over the course of reviewing 22 the Kinder Morgan system on several 23 engagements.</p> <p>24 Q. Let's turn then to the --</p>
<p style="text-align: right;">30</p> <p>1 pipeline in northern California a 2 commingled gasoline product?</p> <p>3 MR. STACK: Objection, 4 relevant. Lacks foundation. Calls for 5 hearsay testimony and/or an expert 6 opinion.</p> <p>7 A. Yes, it was.</p> <p>8 Q. And during the period from 9 1985 to 2003, to your knowledge did the 10 commingled gasoline product shipped on 11 the Kinder Morgan pipeline in northern 12 California contain MTBE?</p> <p>13 MR. STACK: Objection, 14 relevance. Lacks foundation. Calls for 15 a hearsay and/or calls for an expert 16 opinion.</p> <p>17 A. Well, I can comment from 18 the early '90s because from the early 19 '90s onward I would say it certainly 20 carried MTBE gasoline. Prior to the 21 early '90s the records for tracking MTBE 22 gasoline in California were not being 23 kept. As I mentioned, the California 24 Energy Commission, the CEC, began</p>	<p style="text-align: right;">32</p> <p>1 southern California. Are you familiar 2 with the Kinder Morgan pipeline system 3 in southern California?</p> <p>4 MR. STACK: Objection, 5 relevance.</p> <p>6 A. I am.</p> <p>7 Q. And, again, can you explain 8 the basis for your familiarity with the 9 pipeline system in southern California?</p> <p>10 A. Sure. During the -- I had 11 mentioned the work on the Department of 12 State, which looked at the production 13 and use of MTBE gasoline in the state of 14 California leading up to the phaseout of 15 MTBE gasoline, and so during the course 16 of that, I became familiar with the 17 Kinder Morgan pipeline operations in 18 both north and south.</p> <p>19 (Below-described document 20 marked as Burke Exhibit 4.)</p> <p>21 BY MS. AMRON:</p> <p>22 Q. Let me show you what has 23 been marked as Exhibit 4, which is a 24 graphic entitled "Kinder Morgan pipeline</p>

<p style="text-align: right;">33</p> <p>1 system, Southern California."</p> <p>2 A. I got it.</p> <p>3 Q. And ask you whether the</p> <p>4 system that is depicted on this graphic</p> <p>5 is familiar to you.</p> <p>6 MR. STACK: Objection,</p> <p>7 relevance. Lacks foundation. Calls for</p> <p>8 hearsay.</p> <p>9 A. Yes. This -- I am familiar</p> <p>10 with this. Again, this, I believe, is</p> <p>11 from the Kinder Morgan Web site.</p> <p>12 Q. To your knowledge is this</p> <p>13 an accurate depiction of the Kinder</p> <p>14 Morgan pipeline in southern California</p> <p>15 into Arizona?</p> <p>16 MR. STACK: Objection,</p> <p>17 relevant. Lacks foundation. Calls for</p> <p>18 hearsay or calls for an expert opinion.</p> <p>19 A. It is accurate. It is</p> <p>20 showing the major characteristics of</p> <p>21 this southern pipeline system. There's</p> <p>22 a line supplying down to San Diego, a</p> <p>23 line out to Phoenix, Arizona, and then</p> <p>24 also supply up to Las Vegas. And that's</p>	<p style="text-align: right;">35</p> <p>1 gasoline product that was shipped on the</p> <p>2 southern pipeline system, the southern</p> <p>3 Kinder Morgan pipeline system, contain</p> <p>4 MTBE?</p> <p>5 MR. STACK: Objection,</p> <p>6 relevance. Lacks foundation. Calls for</p> <p>7 hearsay testimony from a percipient</p> <p>8 witness or otherwise calls for an expert</p> <p>9 opinion.</p> <p>10 A. Well -- I'm sorry. From</p> <p>11 the early 1990s forward, I would say it</p> <p>12 did contain MTBE.</p> <p>13 Q. Now, you identified one of</p> <p>14 the Exxon Mobil refineries as being in</p> <p>15 Torrance, California. Did the Torrance</p> <p>16 refinery distribute gasoline in</p> <p>17 California using the Kinder Morgan</p> <p>18 pipeline between 1985 and 2003, to your</p> <p>19 knowledge?</p> <p>20 MR. STACK: Objection,</p> <p>21 relevance. Objection on the basis of</p> <p>22 lack of foundation. Calls for hearsay</p> <p>23 from a percipient witness or otherwise</p> <p>24 calls for an expert opinion.</p>
<p style="text-align: right;">34</p> <p>1 all consistent with my understanding of</p> <p>2 the Kinder Morgan system.</p> <p>3 Q. And from the period from</p> <p>4 1985 to 2003, was gasoline that was</p> <p>5 shipped on the Kinder Morgan pipeline</p> <p>6 system in southern California a</p> <p>7 commingled product?</p> <p>8 MR. STACK: Objection,</p> <p>9 relevance. Lacks foundation. Calls for</p> <p>10 hearsay of a percipient witness or calls</p> <p>11 for an expert opinion.</p> <p>12 A. Similar to the northern,</p> <p>13 the answer I gave for the northern</p> <p>14 system, from the early 1990s forward,</p> <p>15 MTBE gasoline was being shipped on this</p> <p>16 common -- this common carrier pipeline</p> <p>17 system. And it is possible it was being</p> <p>18 shipped before that; we just don't have</p> <p>19 the records for that. But the CEC</p> <p>20 documented its production and sale</p> <p>21 within California from the early '90s</p> <p>22 forward.</p> <p>23 Q. During that same time</p> <p>24 period, 1985 to 2003, did the commingled</p>	<p style="text-align: right;">36</p> <p>1 A. Well, the Torrance refinery</p> <p>2 is connected into the Kinder Morgan</p> <p>3 common carrier pipeline system, so it</p> <p>4 certainly was supplying into that. And</p> <p>5 gasoline supplied by it or produced by</p> <p>6 it, including from the early 1990s</p> <p>7 onward, MTBE gasoline would have been</p> <p>8 distributed on that system.</p> <p>9 Q. Let me turn to retail sales</p> <p>10 of gasoline.</p> <p>11 Now, as part of your work</p> <p>12 at Nexant, are you familiar with</p> <p>13 nationwide gasoline retail sales figures</p> <p>14 from the period from 1985 to 2003?</p> <p>15 MR. STACK: Objection,</p> <p>16 relevance. Calls for an expert opinion.</p> <p>17 A. I am.</p> <p>18 Q. And why are you familiar</p> <p>19 with those figures?</p> <p>20 A. Well, retail is an</p> <p>21 important part of the overall supply</p> <p>22 chain and the overall operations of oil</p> <p>23 companies and petroleum companies in the</p> <p>24 United States. So as part of tracking</p>

<p style="text-align: right;">37</p> <p>1 what individual companies are doing, 2 developments in the industry, it is 3 important to know who is -- who are the 4 leaders, changes in -- who have top 5 shares, who have sold facilities and so 6 forth. So as part of that, I have 7 monitored retail market share certainly 8 at the national level based on annual 9 statistics which are produced by the 10 National Petroleum News, which is, you 11 know, readily available and widely 12 circulated within the industry.</p> <p>13 Q. And are those figures 14 something that you rely on in your work?</p> <p>15 MR. STACK: Objection, 16 relevance. Objection, foundation. This 17 clearly calls for hearsay testimony and 18 otherwise calls for an undisclosed 19 expert opinion.</p> <p>20 A. I do rely on them to the 21 extent that when I'm profiling 22 companies, looking at their activities, 23 sometimes their strategies for where to 24 do investments, I need to know their</p>	<p style="text-align: right;">39</p> <p>1 A. Before the merger. I would 2 say they were probably number one 3 essentially every year.</p> <p>4 Q. Well, then after the 5 merger, based on your familiarity with 6 nationwide gasoline retail sales, where 7 did Exxon Mobil, the merged company, 8 rank with respect to other companies for 9 retail market sales?</p> <p>10 MR. STACK: Objection, 11 relevance. Lacks foundation. Calls for 12 hearsay testimony from a percipient 13 witness or otherwise calls for 14 expression of an undisclosed expert 15 opinion by Mr. Burke.</p> <p>16 A. The combined Exxon/Mobil 17 share would have remained, I would say, 18 number one or number two.</p> <p>19 Q. Are you familiar with 20 retail sales of gasoline stations in 21 California?</p> <p>22 A. I don't specifically track 23 that data. It is not as readily 24 available.</p>
<p style="text-align: right;">38</p> <p>1 role and position in the retail end of 2 the business. So, yes, I do keep track 3 of that</p> <p>4 Q. Now, before the merger of 5 Exxon and Mobil in 1999, if you take 6 Exxon and Mobil together, where did 7 their combined retail sales rank in 8 comparison to other retail companies, 9 gasoline retail companies?</p> <p>10 MR. STACK: Objection, 11 relevance. Objection, foundation -- 12 lacks foundation. It calls for hearsay 13 testimony from a percipient witness or 14 otherwise calls for an undisclosed 15 expert opinion from Mr. Burke.</p> <p>16 A. I would say that the 17 combined Exxon/Mobil during that entire 18 period would have had -- would have been 19 the number one -- would have had the 20 number one market share in retail sales 21 of gasoline for essentially every year. 22 It is possible toward the end of that -- 23 you said 2003?</p> <p>24 Q. No, before the merger.</p>	<p style="text-align: right;">40</p> <p>1 MS. AMRON: Can we go off 2 the record for one second and let me 3 consult with Mr. Campins.</p> <p>4 THE VIDEOGRAPHER: We're 5 going off the record. The time is 6 2:49 p.m.</p> <p>7 (Recess.)</p> <p>8 THE VIDEOGRAPHER: We're 9 back on the record. The time is 10 2:51 p.m.</p> <p>11 BY MS. AMRON:</p> <p>12 Q. Mr. Burke, can you, based 13 on your experience and work with Kinder 14 Morgan, describe generally where the 15 northern Kinder Morgan -- northern 16 California Kinder Morgan pipeline 17 serves?</p> <p>18 MR. STACK: Objection, 19 relevance. Lacks foundation. Calls for 20 hearsay testimony from a percipient 21 witness or otherwise calls for an 22 undisclosed expert opinion from 23 Mr. Burke regarding specialized and 24 technical knowledge.</p>

<p style="text-align: right;">41</p> <p>1 A. Well, the northern system</p> <p>2 basically serves all the communities</p> <p>3 around where the pipelines -- the</p> <p>4 pipeline system goes, so that includes</p> <p>5 San Francisco, though there is a fair</p> <p>6 amount that is supplied directly from</p> <p>7 refinery terminals there. But as you</p> <p>8 get further away from San Francisco</p> <p>9 where the refineries can reach, the</p> <p>10 product is moving, gasoline is moving on</p> <p>11 the pipelines.</p> <p>12 So really the northern part</p> <p>13 of California across to, say, Lake</p> <p>14 Tahoe, the pipeline goes through to</p> <p>15 Reno, Nevada. So there's some supply</p> <p>16 into Nevada. So it's basically those</p> <p>17 areas.</p> <p>18 Q. And with respect to the</p> <p>19 southern California Kinder Morgan</p> <p>20 pipeline, could you describe what area</p> <p>21 that pipeline serves?</p> <p>22 MR. STACK: Objection,</p> <p>23 relevance. Lacks foundation. Calls for</p> <p>24 hearsay testimony from a percipient</p>	<p style="text-align: right;">43</p> <p>1 investments and so forth, which is</p> <p>2 normal in a -- big systems like this.</p> <p>3 But essentially the answer is yes, the</p> <p>4 primary distribution system and pipeline</p> <p>5 routes have been the same.</p> <p>6 MS. AMRON: I have no</p> <p>7 further questions.</p> <p>8 MR. STACK: I will ask my</p> <p>9 colleague to mark the reports prepared</p> <p>10 by Mr. Burke. His December 19, 2008,</p> <p>11 report should be marked Exhibit 5. His</p> <p>12 February 6, 2009, report should be</p> <p>13 marked as Exhibit 6. And his March 16,</p> <p>14 2009, report should be marked as</p> <p>15 Exhibit No. 7. If we can take a moment</p> <p>16 to do that and we will proceed further.</p> <p>17 (Above-described documents</p> <p>18 marked as Burke Exhibit 5, Burke Exhibit</p> <p>19 6, and Burke Exhibit 7.)</p> <p>20 CROSS EXAMINATION</p> <p>21 BY MR. STACK:</p> <p>22 Q. Good afternoon, Mr. Burke.</p> <p>23 How are you?</p> <p>24 A. Fine. Good afternoon.</p>
<p style="text-align: right;">42</p> <p>1 witness or otherwise calls for Mr. Burke</p> <p>2 to express an undisclosed expert opinion</p> <p>3 of specialized and technical knowledge.</p> <p>4 A. Well, in southern</p> <p>5 California, again, the Kinder Morgan</p> <p>6 pipeline system would supply communities</p> <p>7 and areas around where the pipelines</p> <p>8 go. There are terminals located along</p> <p>9 the various legs of the pipeline. So</p> <p>10 the pipeline will supply down to San</p> <p>11 Diego, across basically through southern</p> <p>12 California over to Las Vegas across to</p> <p>13 Phoenix. So basically it is like any</p> <p>14 pipeline; it supplies along its route.</p> <p>15 Q. And did the route of the</p> <p>16 two pipelines remain basically the same</p> <p>17 between 1985 and 2003?</p> <p>18 MR. STACK: Objection,</p> <p>19 relevance. Lacks foundation. Calls for</p> <p>20 hearsay testimony from a percipient</p> <p>21 witness or otherwise calls for an</p> <p>22 undisclosed expert opinion from</p> <p>23 Mr. Burke.</p> <p>24 A. There have been incremental</p>	<p style="text-align: right;">44</p> <p>1 Q. With regard to the</p> <p>2 documents we have marked, Exhibit No. 5,</p> <p>3 is that an expert report that you</p> <p>4 prepared in the New York City versus</p> <p>5 Amerada Hess case?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Exhibit No. 6 dated</p> <p>8 February 6, 2009, is that a rebuttal</p> <p>9 expert report that you prepared in the</p> <p>10 City of New York versus Amerada Hess</p> <p>11 case?</p> <p>12 A. Yes, it is.</p> <p>13 Q. And Exhibit No. 7 dated</p> <p>14 March 16, 2009, is that a second expert</p> <p>15 rebuttal report that you prepared in the</p> <p>16 case captioned City of New York versus</p> <p>17 Amerada Hess?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Now, in the context of</p> <p>20 preparing those reports, you were</p> <p>21 providing expert opinions concerning</p> <p>22 specialized and technical knowledge that</p> <p>23 you have about the refining and</p> <p>24 distribution of petroleum products into</p>